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Mega Force Productions Corp. and Tomasz Kondek.
Case 13–CA–44252

February 28, 2008

DECISION AND ORDER

BY MEMBERS LIEBMAN AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charge filed on September 4 and November 2, 2007, respectively, by Tomasz Kondek, the General Counsel issued the complaint on November 15, 2007, against Mega Force Productions Corp., the Respondent, alleging that it has violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On January 4, 2008, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on January 9, 2008, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment¹

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by November 29, 2007, the Board could find that the allegations in the complaint are true. Further, the uncontroverted allegations of the motion for default judgment disclose that the Region, by letter dated December 7, 2007, notified the Respondent that unless an answer was filed by December 13, 2007, a motion for default judgment would be filed. The uncontroverted allegations of the motion for default judgment also disclose that on December 12, 2007, pursuant to a December 11, 2007 request from the Respondent's owner, Lester Bafia, the Region, by facsimile, sent the

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Members Liebman and Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

Respondent a copy of the complaint and a letter extending the deadline for filing an answer to December 19, 2007.

In the absence of good cause being shown for the failure to file a timely answer or a response to the Notice to Show Cause, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Illinois corporation with an office and place of business in Chicago, Illinois, has been engaged in the production, sale, and distribution of a newspaper.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$200,000.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, purchased and received goods and/or services valued in excess of \$5000 from points directly outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Wesley Kaufman	General Manager
Lester Bafia	Owner

On or about April 2, 2007, the Respondent's employees, including Tomasz Kondek, concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees, by demanding that pay no longer be delayed.

On or about April 13, 2007, the Respondent discharged and has since failed to reinstate Tomasz Kondek. The Respondent engaged in the conduct described above because Tomasz Kondek engaged in the conduct described above and to discourage employees from engaging in these or other concerted activities.

About April 17, 2007, the Respondent, by Lester Bafia, at Dunkin Donuts on West Belmont and Narra-

ganset, threatened to withhold its employees' pay if they pursued government action against the Respondent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) by discharging Tomasz Kondek because he engaged in protected concerted activity, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).² The Respondent shall also be required to remove from its files any and all references to the unlawful discharge of Kondek, and to notify him in writing that this has been done and that the discharge will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Mega Force Productions Corp., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they engage in protected concerted activities, or to discourage employees from engaging in such activities.

(b) Threatening to withhold employees' pay if they pursued government action against the Respondent.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Tomasz Kondek full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

(b) Make Tomasz Kondek whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharge of Tomasz Kondek and, within 3 days thereafter, notify him in writing that this has been done, and that the unlawful discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 2, 2007.

² In the complaint, the General Counsel "seeks compound interest computed on a quarterly basis for any monetary amounts owing to the Charging Party." The General Counsel does not further explain or provide argument in support of this request. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Rogers Corp.*, 344 NLRB 504 (2005).

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 28, 2008

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against you because you engage in protected concerted activities, or to discourage you from engaging in such activities.

WE WILL NOT threaten to withhold your pay if you pursue government action against us.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Tomasz Kondek full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

WE WILL make Tomasz Kondek whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful discharge of Tomasz Kondek and, within 3 days thereafter, notify him in writing that this has been done, and that the unlawful discharge will not be used against him in any way.

MEGA FORCE PRODUCTIONS CORP.